

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JUDGE LEE

MAGISTRATE JUDGE MASON

12CR 782

UNITED STATES OF AMERICA

v.

ROBERT KOLBUSZ

Violations: Title 18, United States
Code, Sections 1341 and 1343

RECEIVED

OCT X 3 2012

THOMAS G. BRUTON
CLERK, U.S. DISTRICT COURT

COUNT ONE

The SPECIAL SEPTEMBER 2011 GRAND JURY charges:

1. At times material to this indictment:

The Defendant

a. Defendant ROBERT KOLBUSZ was a physician licensed to practice medicine in Illinois. Defendant KOLBUSZ owned and operated a clinic called the Center for Dermatology and Skin Cancer, Ltd., located at 3825 Highland Avenue, Downers Grove, Illinois.

Medicare

b. Medicare was a national health insurance program. The Centers for Medicare and Medicaid Services, also known as CMS, was a federal agency within the United States Department of Health and Human Services, which administered the Medicare program through its contractors. Medicare provided free or below-cost health care benefits to certain eligible beneficiaries, primarily persons who were sixty-five years of age and older.

c. Medicare helped pay for certain medically necessary physician services, outpatient services, and other medical services, including medically necessary treatments.

d. CMS contracted with Wisconsin Physicians Service, a Medicare contractor, to process certain Medicare claims submitted for physician's services for beneficiaries in Illinois.

e. Medicare ordinarily authorized payment for physician and hospital services only if those services were actually provided and were "medically necessary." That is, the services were required because of disease, disability, infirmity, or impairment. Medicare would not pay for services and treatment that were not actually provided or if the patient did not meet criteria indicating that the patient needed the relevant services and treatment.

f. Defendant KOLBUSZ was a "provider" under the Medicare program. That is, he was approved to administer services to Medicare clients and to receive compensation for the services, provided they met requirements for reimbursement and were rendered.

Private Health Insurance Carriers

g. Blue Cross Blue Shield of Illinois, located in Chicago, Illinois, was a Division of Health Care Service Corporation. Blue Cross was a health insurance carrier that provided health insurance plans to groups of individuals through their employer-sponsored health insurance plans. Like Medicare, Blue Cross would only reimburse providers for medically necessary services. Defendant KOLBUSZ was an enrolled provider of services to Blue Cross and was eligible for reimbursement for covered services that were provided.

h. Aetna, located in Princeton, New Jersey, was a health insurance carrier that provided health insurance plans to groups of individuals through their employer-sponsored health insurance plans. Like Medicare, Aetna would only reimburse providers for medically necessary services. Defendant KOLBUSZ was an enrolled provider of services to Aetna and was eligible for reimbursement for covered services that were provided.

i. Humana, located in Green Bay, Wisconsin, was a health insurance carrier that provided health insurance plans to groups of individuals through their employer-sponsored health insurance plans. Like Medicare, Humana would only reimburse providers for medically necessary services. Defendant KOLBUSZ was an enrolled provider of services to Humana and was eligible for reimbursement for covered services that were provided.

Billing and Diagnosis Codes

j. Health care providers reported professional services using numerical codes called CPT codes. Health care providers reported diagnoses using numerical codes called ICD-9 codes.

k. To have received reimbursement for a covered service from a health care provider such as Medicare or Blue Cross, a provider had to submit a claim form containing the required information appropriately identifying the dates of service, provider, patient, diagnosis, services rendered, and number of units rendered.

l. ICD-9 code 702.0 covers actinic keratosis, which is defined by Medicare as “solar keratoses, or common, sun-induced skin lesions that are confined to the epidermis and have the potential to become skin cancer.”

m. CPT code 17004 covers the treatment of actinic keratosis, specifically, the destruction of 15 or more actinic keratosis lesions.

2. Beginning in or about 2003, and continuing through in or about 2010, at Downers Grove, in the Northern District of Illinois, Eastern Division, and elsewhere,

ROBERT KOLBUSZ,

defendant herein, devised, intended to devise, and participated in a scheme to defraud and to obtain money from Medicare and private health insurance carriers by means of materially false and fraudulent pretenses, representations, and promises, which scheme is further described below.

3. It was part of the scheme that defendant KOLBUSZ submitted claims for treatments to Medicare and private health insurance carriers under CPT code 17004, falsely claiming that the treatments were medically necessary to treat actinic keratosis, a condition that he knew that his patients did not have.

4. It was further part of the scheme that defendant KOLBUSZ documented and caused to be documented in patients' medical charts false and fictitious signs and symptoms in order to provide written support for the medically unnecessary, cosmetic treatments defendant KOLBUSZ ordered. Defendant KOLBUSZ further included and caused to be included in patients' charts various false and fictitious diagnoses of actinic keratosis that were not based on the patients' actual signs and symptoms to provide written support for the treatments defendant KOLBUSZ ordered.

5. It was further part of the scheme that defendant KOLBUSZ submitted and caused to be submitted claims to Medicare and private health insurance carriers for services under CPT code 17004 that defendant KOLBUSZ knew were not properly payable because (1) defendant KOLBUSZ had included and caused to be included false diagnoses in the claims, (2) the treatments for which defendant KOLBUSZ sought reimbursement were not medically necessary, and (3) defendant

KOLBUSZ falsified and caused to be falsified the medical records supporting the claim by including false and fictitious diagnoses and other information.

6. It was further part of the scheme that defendant KOLBUSZ submitted and caused to be submitted false claims in this manner for hundreds of patients during the scheme, including, for example, Individuals A through G, resulting in millions of dollars of losses to Medicare and the private health insurance carriers.

Individual A

7. It was further part of the scheme that on multiple occasions beginning in or about 2003 and continuing until in or about 2008, defendant KOLBUSZ falsely diagnosed and caused to be diagnosed Individual A with actinic keratosis.

8. It was further part of the scheme that defendant KOLBUSZ ordered that Individual A undergo multiple, medically unnecessary treatments beginning in or about 2003 and continuing until in or about 2008.

9. It was further part of the scheme that, to help ensure payment for the alleged treatments of actinic keratosis, on or about May 23, 2007, defendant KOLBUSZ wrote and caused to be written a letter to Blue Cross, falsely claiming that Individual A had “severe actinic damage” and had 1-15 lesions on her face, as well as 25-35 lesions on her chest, arms, and back.

10. It was further part of the scheme that, to attempt to justify use of CPT code 17004 so that medically unnecessary treatments would be covered by insurance, defendant KOLBUSZ caused operative reports to falsely document the number of lesions that allegedly were destroyed on Individual A’s skin, to the effect that the operative reports altogether indicate that approximately 1,843 lesions were destroyed on Individual A’s face between 2003 and 2008, including

approximately 169 lesions in the period following the letter in which defendant KOLBUSZ stated and caused to be stated that Individual A had 1-15 lesions on her face.

11. It was further part of the scheme that on or about November 20, 2007, defendant KOLBUSZ submitted a claim to Blue Cross for services provided to Individual A on or about November 16, 2007, namely, tbrownbrohe alleged destruction of 15 or more actinic keratosis lesions. On or about December 10, 2007, defendant KOLBUSZ caused to be delivered by United States mail a check from Blue Cross, which funds represented payment on the claim, which defendant KOLBUSZ knew was false.

Individual B

12. It was further part of the scheme that on multiple occasions beginning in or about June 2007 and continuing until in or about January 2008, defendant KOLBUSZ falsely diagnosed and caused to be diagnosed Individual B with actinic keratosis.

13. It was further part of the scheme that defendant KOLBUSZ ordered that Individual B undergo multiple, medically unnecessary treatments beginning in or about November 2007 and continuing until in or about January 2008.

14. It was further part of the scheme that, to help ensure payment for the alleged treatments of actinic keratosis, on or about June 11, 2007, defendant KOLBUSZ wrote and caused to be written a letter to Blue Cross, falsely claiming that Individual B had "severe actinic damage" and had 15-25 lesions on her face, as well as 25-35 lesions on her chest, arms, and back.

15. It was further part of the scheme that, to attempt to justify use of CPT code 17004 so that medically unnecessary treatments would be covered by insurance, defendant KOLBUSZ caused operative reports to falsely document the number of lesions that allegedly were destroyed on

Individual B's skin, to the effect that the operative reports altogether indicate that approximately 67 lesions were destroyed on Individual B's back between November 2007 and January 2008.

16. It was further part of the scheme that on or about January 9, 2008, defendant KOLBUSZ submitted a claim to Blue Cross for services provided to Individual B on or about January 5, 2008, namely, the alleged destruction of 15 or more actinic keratosis lesions. On or about January 25, 2008, defendant KOLBUSZ caused to be delivered by United States mail a check from Blue Cross, which funds represented payment on the claim, which defendant KOLBUSZ knew was false.

Individual C

17. It was further part of the scheme that on multiple occasions beginning in or about March 2007 and continuing until in or about February 2009, defendant KOLBUSZ falsely diagnosed and caused to be diagnosed Individual C with actinic keratosis.

18. It was further part of the scheme that defendant KOLBUSZ ordered that Individual C undergo multiple, medically unnecessary treatments beginning in or about March 2007 and continuing until in or about February 2009.

19. It was further part of the scheme that, to justify use of CPT code 17004 so that medically unnecessary treatments would be covered by insurance, defendant KOLBUSZ caused operative reports to falsely document the number of lesions that allegedly were destroyed on Individual C's skin, to the effect that the operative reports altogether indicate that more than 1,000 lesions were destroyed on Individual C's skin beginning in or about March 2007 and continuing until in or about February 2009.

20. It was further part of the scheme that on or about March 5, 2008, defendant KOLBUSZ submitted a claim to Medicare for services provided to Individual C on or about February 27, 2008, namely, the alleged destruction of 15 or more actinic keratosis lesions. On or about March 19, 2008, Medicare paid defendant KOLBUSZ approximately \$133.97 on the claim, which defendant KOLBUSZ knew was false, by means of an electronic funds transfer to defendant KOLBUSZ's account at Leaders Bank in Oak Brook, Illinois.

Individual D

21. It was further part of the scheme that on multiple occasions beginning in or about September 2007 and continuing until in or about May 2008, defendant KOLBUSZ falsely diagnosed and caused to be diagnosed Individual D with actinic keratosis.

22. It was further part of the scheme that defendant KOLBUSZ ordered that Individual D undergo multiple, medically unnecessary treatments beginning in or about January 2008 and continuing until in or about May 2008.

23. It was further part of the scheme that, to attempt to justify use of CPT code 17004 so that medically unnecessary treatments would be covered by insurance, defendant KOLBUSZ caused operative reports to falsely document the number of lesions that allegedly were destroyed on Individual D's skin, to the effect that the operative reports altogether indicate that approximately 125 lesions were destroyed on Individual D's arms and hands beginning in or about January 2008 and continuing until in or about May 2008.

24. It was further part of the scheme that on or about April 29, 2008, defendant KOLBUSZ submitted a claim to Medicare for services provided to Individual D on or about April 22, 2008, namely, the alleged destruction of 15 or more actinic keratosis lesions. On or about May

13, 2008, Medicare paid defendant KOLBUSZ approximately \$133.97 on the claim, which defendant KOLBUSZ knew was false, by means of an electronic funds transfer to defendant KOLBUSZ's account at Leaders Bank in Oak Brook, Illinois.

Individual E

25. It was further part of the scheme that on multiple occasions beginning in or about February 2009 and continuing until in or about September 2009, defendant KOLBUSZ falsely diagnosed and caused to be diagnosed Individual E with actinic keratosis.

26. It was further part of the scheme that defendant KOLBUSZ ordered that Individual E undergo multiple, medically unnecessary treatments beginning in or about February 2009 and continuing until in or about September 2009.

27. It was further part of the scheme that, to help ensure payment for the alleged treatments of actinic keratosis, on or about February 11, 2009, defendant KOLBUSZ wrote and caused to be written a letter to Humana, falsely claiming that Individual E had "severe actinic damage" and had 15-25 lesions on her face, as well as 25-35 lesions on her chest, arms, and back.

28. It was further part of the scheme that, to attempt to justify use of CPT code 17004 so that medically unnecessary treatments would be covered by insurance, defendant KOLBUSZ caused operative reports to falsely document the number of lesions that allegedly were destroyed on Individual E's skin, to the effect that the operative reports altogether indicate that approximately 257 lesions were destroyed on Individual E's arms and hands beginning in or about February 2009 and continuing until in or about September 2009, including approximately 68 lesions on her face.

29. It was further part of the scheme that on or about September 14, 2009, defendant KOLBUSZ submitted or caused to be submitted a claim to Humana for services provided to

Individual E on or about September 8, 2009, namely, the alleged destruction of 15 or more actinic keratosis lesions. On or about September 28, 2009, defendant KOLBUSZ caused to be delivered by United States mail a check from Humana, which funds represented payment on the claim, which defendant KOLBUSZ knew was false.

Individual F

30. It was further part of the scheme that on multiple occasions beginning in or about January 2005 and continuing until in or about November 2009, defendant KOLBUSZ falsely diagnosed and caused to be diagnosed Individual F with actinic keratosis.

31. It was further part of the scheme that defendant KOLBUSZ ordered that Individual F undergo multiple, medically unnecessary treatments beginning in or about January 2005 and continuing until in or about November 2009.

32. It was further part of the scheme that, to attempt to justify use of CPT code 17004 so that medically unnecessary treatments would be covered by insurance, defendant KOLBUSZ caused operative reports to falsely document the number of lesions that allegedly were destroyed on Individual F's skin, to the effect that the operative reports altogether indicate that more than 2,000 lesions were destroyed on Individual F's skin beginning in or about January 2006 and continuing until in or about November 2009, including more than 500 lesions on her legs, more than 300 on her arms and hands, more than 200 on her back, and more than 100 on her face.

33. It was further part of the scheme that on or about November 5, 2009, defendant KOLBUSZ submitted a claim to Medicare for services provided to Individual F on or about November 2, 2009, namely, the alleged destruction of 15 or more actinic keratosis lesions. On or about November 19, 2009, Medicare paid defendant KOLBUSZ approximately \$133.15 on the

claim, which defendant KOLBUSZ knew was false, by means of an electronic funds transfer to defendant KOLBUSZ's account at Leaders Bank in Oak Brook, Illinois.

Individual G

34. It was further part of the scheme that on multiple occasions beginning in or about February 2006 and continuing until in or about January 2010, defendant KOLBUSZ falsely diagnosed and caused to be diagnosed Individual G with actinic keratosis.

35. It was further part of the scheme that defendant KOLBUSZ ordered that Individual G undergo multiple, medically unnecessary treatments beginning in or about February 2006 and continuing until in or about January 2010.

36. It was further part of the scheme that, to attempt to justify use of CPT code 17004 so that medically unnecessary treatments would be covered by insurance, defendant KOLBUSZ caused operative reports to falsely document the number of lesions that allegedly were destroyed on Individual G's skin, to the effect that the operative reports altogether indicate that more than 1,200 lesions were destroyed on Individual G's skin beginning in or about February 2006 and continuing until in or about January 2010, including approximately 577 lesions on her back.

37. It was further part of the scheme that on or about December 23, 2009, defendant KOLBUSZ submitted a claim to Blue Cross for services provided to Individual G on or about December 18, 2009, namely, the alleged destruction of 15 or more actinic keratosis lesions. On or about December 31, 2009, Blue Cross paid defendant KOLBUSZ approximately \$161.10 on the claim by means of an electronic funds transfer to defendant KOLBUSZ's account at Leaders Bank in Oak Brook, Illinois.

38. It was further part of the scheme that defendant KOLBUSZ misrepresented, concealed, hid and caused to be misrepresented, concealed, and hidden acts done in furtherance of the scheme and the purposes of those acts.

39. On or about December 10, 2007, at Downers Grove, in the Northern District of Illinois, Eastern Division, and elsewhere,

ROBERT KOLBUSZ,

defendant herein, for the purpose of executing the scheme, knowingly did cause to be delivered by United States mail, according to the direction thereon, an envelope containing a check from Blue Cross, which funds represented the payment by Blue Cross on a claim submitted regarding Individual A's alleged treatment for actinic keratosis;

In violation of Title 18, United States Code, Section 1341.

COUNT TWO

The SPECIAL SEPTEMBER 2011 GRAND JURY further charges:

1. Paragraphs 1 through 38 of Count One are incorporated here.
2. On or about January 25, 2008, at Downers Grove, in the Northern District of Illinois, Eastern Division, and elsewhere,

ROBERT KOLBUSZ,

defendant herein, for the purpose of executing the scheme, knowingly did cause to be delivered by United States mail, according to the direction thereon, an envelope containing a check from Blue Cross, which funds represented the payment by Blue Cross on a claim submitted regarding Individual B's alleged treatment for actinic keratosis;

In violation of Title 18, United States Code, Section 1341.

COUNT THREE

The SPECIAL SEPTEMBER 2011 GRAND JURY further charges:

1. Paragraphs 1 through 38 of Count One are incorporated here.
2. On or about March 19, 2008, at Downers Grove, in the Northern District of Illinois,

Eastern Division, and elsewhere,

ROBERT KOLBUSZ,

defendant herein, for the purpose of executing the scheme, knowingly caused to be transmitted by means of wire communication in interstate commerce certain writings, signs, and signals, namely, a funds transfer from the account of Medicare at JP Morgan Chase in Florida to the defendant's account at Leaders Bank in Illinois, which funds represented the payment by Medicare on a claim submitted regarding Individual C's alleged treatment for actinic keratosis;

In violation of Title 18, United States Code, Section 1343.

COUNT FOUR

The SPECIAL SEPTEMBER 2011 GRAND JURY further charges:

1. Paragraphs 1 through 38 of Count One are incorporated here.
2. On or about May 13, 2008, at Downers Grove, in the Northern District of Illinois, Eastern Division, and elsewhere,

ROBERT KOLBUSZ,

defendant herein, for the purpose of executing the scheme, knowingly caused to be transmitted by means of wire communication in interstate commerce certain writings, signs, and signals, namely, a funds transfer from the account of Medicare at JP Morgan Chase in Florida to the defendant's account at Leaders Bank in Illinois, which funds represented the payment by Medicare on a claim submitted regarding Individual D's alleged treatment for actinic keratosis;

In violation of Title 18, United States Code, Section 1343.

COUNT FIVE

The SPECIAL SEPTEMBER 2011 GRAND JURY further charges:

1. Paragraphs 1 through 38 of Count One are incorporated here.
2. On or about September 28, 2009, at Downers Grove, in the Northern District of Illinois, Eastern Division, and elsewhere,

ROBERT KOLBUSZ,

defendant herein, for the purpose of executing the scheme, knowingly did cause to be delivered by United States mail, according to the direction thereon, an envelope containing a check from Humana, which funds represented the payment by Humana on a claim submitted regarding Individual E's alleged treatment for actinic keratosis;

In violation of Title 18, United States Code, Section 1341.

COUNT SIX

The SPECIAL SEPTEMBER 2011 GRAND JURY further charges:

1. Paragraphs 1 through 38 of Count One are incorporated here.
2. On or about November 19, 2009, at Downers Grove, in the Northern District of Illinois, Eastern Division, and elsewhere,

ROBERT KOLBUSZ,

defendant herein, for the purpose of executing the scheme, knowingly caused to be transmitted by means of wire communication in interstate commerce certain writings, signs, and signals, namely, a funds transfer from the account of Medicare at JP Morgan Chase in Florida to the defendant's account at Leaders Bank in Illinois, which funds represented the payment by Medicare on a claim submitted regarding Individual F's alleged treatment for actinic keratosis;

In violation of Title 18, United States Code, Section 1343.

COUNT SEVEN

The SPECIAL SEPTEMBER 2011 GRAND JURY further charges:

1. Paragraphs 1 through 38 of Count One are incorporated here.
2. On or about December 31, 2009, at Downers Grove, in the Northern District of Illinois, Eastern Division, and elsewhere,

ROBERT KOLBUSZ,

defendant herein, for the purpose of executing the scheme, knowingly caused to be transmitted by means of wire communication in interstate commerce certain writings, signs, and signals, namely, a funds transfer from the account of Blue Cross Blue Shield at Northern Trust Bank in Illinois to the defendant's account at Leaders Bank in Illinois, which funds represented the payment by Blue Cross on a claim submitted regarding Individual G's alleged treatment for actinic keratosis;

In violation of Title 18, United States Code, Section 1343.

FORFEITURE ALLEGATION

The SPECIAL SEPTEMBER 2011 GRAND JURY further charges:

1. The allegations of Counts One through Seven of this indictment concerning wire and mail fraud in violation of Title 18, United States Code, Sections 1341 and 1343 are incorporated here for the purpose of alleging forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(c) and Title 28, United States Code, Section 2461(c).

2. As a result of the violations of Title 18, United States Code, Sections 1341 and 1343 as alleged in the foregoing indictment,

ROBERT KOLBUSZ,

defendant herein, shall forfeit to the United States, pursuant to Title 18, United States Code, Section 981(a)(1)(c) and Title 28, United States Code, Section 2461(c), any and all right, title, and interest he may have in any property, real and personal, that constitutes and is derived, directly and indirectly, from gross proceeds traceable to the commission of the offense, which property is subject to forfeiture pursuant to Title 18, United States Code, Section, 981(a)(1)(c) and Title 28, United States Code, Section 2461(c).

3. If any of the forfeitable property described above, as a result of any act or omission by the defendant:

- a. Cannot be located upon the exercise of due diligence;
- b. Has been transferred or sold to, or deposited with, a third party;
- c. Has been placed beyond the jurisdiction of the Court;
- d. Has been substantially diminished in value; or

- e. Has been commingled with other property which cannot be divided without difficulty;

the United States of America shall be entitled to forfeiture of substitute property under the provisions of Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code, Section 2461(c).

All pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

A TRUE BILL:

FOREPERSON

ACTING UNITED STATES ATTORNEY